

In the Supreme Court of the State of Alaska

Michael Cooksey,

Appellant,

v.

State of Alaska,

Appellee.

Supreme Court No. A-13351

Order

Date of Order: 3/4/2019

Trial Court Case # 3PA-16-01874CR

Although the Appellant, Michael L. Cooksey, is represented in this appeal, he recently filed a pro se motion to, among other things, transfer his appeal to the Alaska Supreme Court. Normally, the Clerk of the Appellate Courts, pursuant to the Appellate Rules, rejects for filing pro se pleadings submitted by an appellant who is represent by counsel.

But this Court has made some exceptions to this rule, specifically in circumstances where it appears that the appellant is in disagreement with their attorney to the extent that a remand to the superior court may be necessary to resolve an apparent conflict. Although it does not appear that such a remand is necessary, it does appear that Mr. Cooksey believes that his case — a sentence appeal arising from the revocation of his probation — should be filed in the supreme court because Mr. Cooksey believes that this Court does not have the jurisdiction to resolve the appeal under Appellate Rule 215.

Under Appellate Rule 215, a defendant does not have the right to appeal an unsuspended sentence of imprisonment unless that sentence exceeds 2 years for a felony offense. If the sentence does not exceed 2 years of unsuspended time of imprisonment,

and if excessiveness of the sentence is the only claim of error, then the defendant must seek discretionary review in the supreme court.

In the present case, the trial court record indicates that Mr. Cooksey was sentenced to 18 months of imprisonment with 18 months suspended; under Rule 215, even if Mr. Cooksey has been ordered to serve all 18 months (and it appears that he has been so ordered), then he has no right to appeal the sentence to this Court (or to the supreme court) solely on the grounds that it is excessive.

But under Rule 215, a defendant may appeal a sentence to this Court of *any length* on grounds other than excessiveness, including but not limited to: illegality of the sentence; erroneous findings by the trial court that affect the statutory range of sentences to which the defendant is subject; and procedural errors in the sentencing proceeding. It has been this Court's experience that even when the Notice of Appeal claims as error only the excessiveness of the sentence, the actual issues litigated in the appeal also address grounds other than excessiveness. When this happens, this Court has jurisdiction to resolve those other issues.

That said, when it is clear that the only issue is the excessiveness of the sentence, and the sentence does not exceed 2 years of imprisonment, then this Court is required to refer the case to the supreme court. The supreme court then exercises its discretion to determine if it will grant review of the challenged sentence.

For these reasons, Mr. Cooksey's pro se motion to transfer his case to the supreme court is premature. If his appellate attorney discovers during the preparation of the appellant's opening brief that the *only* issue in this appeal is the excessiveness of the sentence, then that attorney shall promptly inform this Court of this development and request this Court to refer the case to the supreme court. This Court notes that it is the appellate attorney, and not Mr. Cooksey, who — as part of the attorney's professional duties while representing Mr. Cooksey — makes this decision.

Therefore, IT IS ORDERED:

1. The pro se request to transfer this case to the supreme court is **DENIED**. But this denial is without prejudice and Mr. Cooksey's appellate attorney may renew this request if the attorney later determines that such a request is appropriate.
2. The Clerk of the Appellate Court shall attach a copy of Mr. Cooksey's pro se motion to this order to ensure that the State is aware of the motion. Mr. Cooksey is instructed that he is not allowed to file pleadings with this Court while he is represented by an attorney.
3. To the extent that Mr. Cooksey is making other requests in his pro se motion, those requests are **DENIED**.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

Sarah E Anderson, Deputy Clerk

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